

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 575

Introduced by Jensen, 20

Read first time January 19, 1999

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to professional and occupational licenses; to
2 amend sections 71-161.19, 71-168.01, 71-1,199, 71-1,200,
3 and 71-1,201, Reissue Revised Statutes of Nebraska; to
4 change provisions relating to liability, complaints, and
5 providing information; to harmonize provisions; to repeal
6 the original sections; and to declare an emergency.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 71-161.19, Reissue Revised Statutes
2 of Nebraska, is amended to read:

3 71-161.19. No member of a board of examiners for any
4 profession or occupation licensed or certified by the Department of
5 Health and Human Services Regulation and Licensure pursuant to the
6 provisions of Chapter 71 or member of a profession or occupation
7 providing consultation to or testimony for the department shall be
8 liable in damages to any person for slander, libel, defamation of
9 character, breach of any privileged communication, or otherwise for
10 any action taken, ~~or~~ recommendation made, or testimony given within
11 the scope of the functions of such ~~board~~ person, if such ~~board~~
12 ~~member~~ person acts without malice and in the reasonable belief that
13 such action, ~~or~~ recommendation, or testimony is warranted by the
14 facts known to him or her after a reasonable effort is made to
15 obtain the facts on which such action is taken, ~~or~~ recommendation
16 is made, or testimony is given.

17 Sec. 2. Section 71-168.01, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 71-168.01. (1) Any person may make a complaint and
20 request investigation of an alleged violation of the Uniform
21 Licensing Law or rules and regulations issued under such law. The
22 department shall review all complaints and determine whether to
23 conduct an investigation and in making such determination may
24 consider factors such as:

25 (a) Whether the complaint pertains to a matter within the
26 authority of the department to enforce;

27 (b) Whether the circumstances indicate that a complaint
28 is made in good faith and is not malicious, frivolous, or

1 vexatious;

2 (c) Whether the complaint is timely or has been delayed
3 too long to justify present evaluation of its merit;

4 (d) Whether the complainant may be a necessary witness if
5 action is taken and is willing to identify himself or herself and
6 come forward to testify; or

7 (e) Whether the information provided or within the
8 knowledge of the complainant is sufficient to provide a reasonable
9 basis to believe that a violation has occurred or to secure
10 necessary evidence from other sources.

11 A complaint submitted to the department shall be
12 confidential, and a person making a complaint shall be immune from
13 criminal or civil liability of any nature, whether direct or
14 derivative, for filing a complaint or for disclosure of documents,
15 records, or other information to the department.

16 (2) If the department determines that a complaint will
17 not be investigated, the department shall notify the complainant of
18 such determination. At the request of the complainant, the
19 appropriate board of examiners may review the complaint and provide
20 its recommendation to the department on whether the complaint
21 merits investigation.

22 (3) A board of examiners may designate one of its
23 professional members to serve as a consultant to the department in
24 reviewing complaints and on issues of professional practice that
25 may arise during the course of an investigation. Such consultation
26 shall not be required for the department to evaluate a complaint or
27 to proceed with an investigation. A board may also recommend or
28 confer with a consultant member of its profession to assist the

1 board or department on issues of professional practice.

2 (4) The department may notify the licensee, certificate
3 holder, or registrant that a complaint has been filed and that an
4 investigation will be conducted except when the department
5 determines that such notice may prejudice an investigation.

6 (5) The department shall advise the appropriate board of
7 examiners on the progress of investigations. If requested by the
8 complainant, the identity of the complainant shall not be released
9 to the board. When the department determines that an investigation
10 is complete, the department shall consult with the board to obtain
11 its recommendation for submission to the Attorney General. In
12 making a recommendation, the board may review all investigative
13 reports and have full access to the investigational file of the
14 department and any previous investigational information in the
15 files of the department on the licensee, certificate holder, or
16 registrant that may be relevant to the investigation, except that
17 reports or other documents of any law enforcement agency provided
18 to the department shall not be available for board review except to
19 the extent such law enforcement agency gives permission for release
20 to the board and reports provided by any other agency or public or
21 private entity, which reports are confidential in that agency's or
22 entity's possession and are provided with the express expectation
23 that the report will not be disclosed, may be withheld from board
24 review. The recommendation of the board shall be made part of the
25 completed investigational report of the department and submitted to
26 the Attorney General. The recommendation of the board shall
27 include, but not be limited to:

28 (a) The specific violations of statute, regulation, or

1 both that the board finds substantiated based upon the
2 investigation;

3 (b) Matters which the board believes require additional
4 investigation; and

5 (c) The disposition or possible dispositions that the
6 board believes appropriate under the circumstances.

7 (6) If the department and the board disagree on the basis
8 for investigation or if the board recommends additional
9 investigation and the department and board disagree on the
10 necessity of additional investigation, the matter shall be
11 forwarded to the Attorney General for review and determination.

12 (7) Complaints, investigational records, reports, and
13 files of any kind shall not be public records, shall not be subject
14 to subpoena or discovery, and shall be inadmissible in evidence in
15 any legal proceeding of any kind or character except a contested
16 case before the department. Such complaints, investigational
17 records, reports, and files shall be a public record if made part
18 of the record of a contested case. No person, including, but not
19 limited to, department employees and members of a board, having
20 access to complaints, investigational records, reports, or files
21 shall disclose such records or information in violation of this
22 section. The department is authorized to cooperate with federal,
23 state, and local law enforcement agencies and other federal, state,
24 and local agencies to exchange information and evidence in
25 discharging the department's responsibilities. Violation of this
26 subsection shall be a Class I misdemeanor.

27 (8) All meetings of the boards of examiners or between a
28 board and staff of the department or the Attorney General on

1 investigatory matters shall be held in closed session, including
2 the voting of the board on any matter pertaining to the
3 investigation or recommendation.

4 Sec. 3. Section 71-1,199, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 71-1,199. ~~Any insurer having knowledge of any violation~~
7 ~~of any of the regulatory provisions governing the profession of the~~
8 ~~practitioner being reported shall report the facts of such~~
9 ~~violation as known to such insurer to the department unless Unless~~
10 such knowledge or information is based on confidential medical
11 records protected by the confidentiality provisions of the federal
12 Public Health Services Act, 42 U.S.C. ~~290ee-3 and 290dd-3~~ 290dd-2,
13 and federal administrative rules and regulations:

14 (1) Any insurer having knowledge of any violation of any
15 of the regulatory provisions governing the profession of the
16 practitioner being reported shall report the facts of such
17 violation as known to such insurer to the department; and

18 (2) All insurers shall cooperate with the department and
19 provide to the department information requested by the department
20 concerning any possible violations by any practitioner.

21 Sec. 4. Section 71-1,200, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 71-1,200. Any insurer shall report to the department, on
24 a form and in the manner specified by the department by rule and
25 regulation, any facts known to the insurer, including, but not
26 limited to, the identity of the practitioner and patient, when the
27 insurer:

28 (1) Has reasonable grounds to believe that a practitioner

1 has committed a violation of the regulatory provisions governing
2 the profession of such practitioner;

3 (2) Has made payment due to an adverse judgment,
4 settlement, or award resulting from a professional liability claim
5 against the insurer, a health care facility as defined in section
6 71-2017.01, or a practitioner, including settlements made prior to
7 suit, arising out of the acts or omissions of the practitioner; ~~or~~

8 (3) Takes an adverse action affecting the coverage
9 provided by the insurer to a practitioner due to alleged
10 incompetence, negligence, unethical or unprofessional conduct, or
11 physical, mental, or chemical impairment. For purposes of this
12 section, adverse action shall not include raising a practitioner's
13 rates for professional liability coverage unless it is based upon
14 grounds that would be reportable and no prior report has been made
15 to the department; or

16 (4) Has been requested by the department to provide
17 information.

18 The report shall be made within thirty days after the
19 date of the action, ~~or event, or request.~~ Nothing in this section
20 or section 71-1,199 shall be construed to require an insurer to
21 report based on information gained due to the filing by a
22 practitioner or on behalf of a practitioner of a claim for payment
23 under his or her health insurance policy.

24 Sec. 5. Section 71-1,201, Reissue Revised Statutes of
25 Nebraska, is amended to read:

26 71-1,201. Any insurer who ~~shall fail or neglect~~ fails or
27 neglects to make a report to or fails or neglects to respond to a
28 request by the department as required by section 71-1,199 or

1 71-1,200 within a reasonable time shall be guilty of a Class IV
2 misdemeanor, unless such insurer ~~shall have~~ has reported the
3 required facts to a law enforcement agency.

4 Sec. 6. Original sections 71-161.19, 71-168.01,
5 71-1,199, 71-1,200, and 71-1,201, Reissue Revised Statutes of
6 Nebraska, are repealed.

7 Sec. 7. Since an emergency exists, this act takes effect
8 when passed and approved according to law.